IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 28 of 2006

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
&
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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BELABNEN VIRABNHAI PARMAR - Petitioner(s)
Versus
PARMAR NATHIBEN GANESHBHAI & 11 - Respondent(s)

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Appearance :
MR SS BELSARE for Petitioner
RULE SERVED BY DS for Respondent(s) : 1, 3,
NOTICE SERVED BY DS for Respondent(s) : 2,
MR JAYESH BAROT for Mr. HS MUNSHAW for Respondent(s) : 3,
DELETED for Respondent(s) : 4 - 12.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI
Date : 05/04/2006

ORAL JUDGMENT **(Per :** *HON'BLE* **MS. JUSTICE R.M.DOSHIT)**

The petitioner is a Councillor in Palanpur Municipality. She was elected on 27th October, 2005.

Feeling aggrieved by her election, the respondent no. 1 challenged the said election in an Election Petition preferred before the District Court at Banaskantha. The said challenge was delayed by a period of five days. The respondent no.1, therefore, took out Misc. Civil Application No. 65 of 2005 for condonation of delay and extension of period of limitation as envisaged by Section 5 of the Limitation Act. The said application was contested by the petitioner. According to the petitioner, the District Court had no *jurisdiction* to extend the period of limitation. The application was, therefore, not maintainable. The application was heard by the Presiding Officer, Fast Track Court, Palanpur and was allowed by the *impugned* order dated 22nd December, 2005. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Belsare has submitted that Section 14 of the Gujarat Municipalities Act, 1963 [hereinafter referred to as, "***the Act***"} empowers a voter to challenge the election of a councillor *within* fifteen days from the date of declaration of the result. Unless the validity of the election is challenged *within* fifteen days as specified by Section 14 of the Act, such challenge cannot be entertained by the District Court. The said Section 14

does not empower the District Court to extend the period of limitation specified in sub-section (1) of Section 14 of the Act.

We have perused the relevant provisions. Sub-section (1) of Section 14 of the Act reads thus -

> **"14 (1) If the validity of any election of a councillor is brought in question by any person qualified to vote at the election to which such question refers or by any candidate for such election such person may, at any time within fifteen days after the date of the declaration of the result of the election, apply to the District Court of the district within which the election has been or should have been held, for the determination of such question."**

The said Section 14 does not confer *jurisdiction* upon the District Court to extend the aforesaid period of limitation. Mr. Barot has conceded that the District Court is not empowered to extend the period of limitation.

We have perused the *impugned* order made by the Court below. Though the question of *jurisdiction* was raised by the petitioner and the contention has been recorded by the learned Judge, the same has not been considered or decided. In absence of specific provision empowering the District Court to extend the period of limitation, the Court below had no *jurisdiction* to condone the delay and extend the period of limitation.

The *impugned* order made by the Court below has *ex facie* been made without the authority of law. The same, therefore, deserves to be *quashed* and set-aside.

In above view of the matter, the petition is allowed. The *impugned* order dated 22nd December, 2005 made by the Presiding Officer, Fast Track Court, Palanpur in Misc. Civil Application No. 65 of 2005 is hereby *quashed* and set-aside. Rule is made absolute. There shall be no order as to cost.

{Miss R.M Doshit, J.}

{Smt. Abhilasha Kumari, J.}

*Prakash**